

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

APPLES' WAY, LLC, a Nebraska limited
liability company;

Plaintiff,

vs.

TEXAS ROADHOUSE HOLDINGS, LLC,
a Kentucky limited liability company;
TWIN CITY FIRE INSURANCE
COMPANY, NATIONAL UNION FIRE
INSURANCE COMPANY,

Defendants.

8:14CV90

MEMORANDUM AND ORDER

The following motions are pending before me:

[Filing No. 41:](#) Motion to Stay filed by Defendant National Union Fire Insurance Company.

[Filing No. 43:](#) Motion to Stay filed by Defendant Texas Roadhouse Holdings, LLC.

[Filing No. 44:](#) Motion to Extend Deadline for Discovery Responses filed by defendant Texas Roadhouse Holdings, LLC.

[Filing No. 45:](#) Motion for Protective Order Staying Discovery and Request for Expedited Ruling filed by Defendant National Union Fire Insurance Company.

These motions were discussed, on the record, during a hearing held today before the undersigned magistrate judge. The above-captioned declaratory action seeks insurance coverage determinations for the personal injury action entitled *Peters v Texas Roadhouse, LLC, et al*, currently pending in the District Court of Lancaster County, Nebraska. Based on the information provided during today's hearing and by email thereafter, defendant Twin City is currently providing the defense and the level of coverage needed to insure Plaintiff Apples' Way prior to the start of any trial in *Peters v Texas Roadhouse, LLC, et al*. The pretrial conference for the underlying case will be

held on December 19, 2014, and the case will likely be tried in the Spring or Summer of 2015. Until *Peters v Texas Roadhouse, LLC, et al* is tried, there is no need to decide if excess coverage is available to Apples' Way from National Union; an anticipatory ruling on that issue is not needed at this time. [Century Indem. Co. v. McGillacuty's, Inc., 820 F.2d 269 \(8th Cir. 1987\).](#)

Accordingly, as stated on the record,

IT IS ORDERED that as to Filing Nos. [41](#), [43](#), [44](#), and [45](#):

- 1) On or before November 13, 2014, defendants Texas Roadhouse and National Union shall serve their answers to the written discovery served on them by Apples Way.
- 2) On or before November 13, 2014, Defendant National Union shall file its anticipated motion to amend its answer.
- 3) The parties shall promptly produce and exchange information as discussed during today's hearing.
- 4) Absent the mutual agreement of the parties, in all other respects this case is stayed pending further order of the court.
- 5) A telephonic conference with the undersigned magistrate judge will be held on the record on **December 23, 2014 at 9:00 a.m.** to discuss the status of *Peters v Texas Roadhouse, LLC, et al*, and the further progression schedule for the above-captioned case. The court will provide calling information for the conference.
- 6) The conference call previously scheduled for December 9, 2014 is cancelled.

October 30, 2014.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge